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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Geographic Partitioning and Spectrum)
Disaggregation by Commercial Mobile)
Radio Services Licensees)

WT Docket No. 96-148

Implementation of Section 257 of the)
Communications Act - Elimination)
of Market Entry Barriers)

GN Docket No. 96-113

COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation ("Western Wireless") hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding (the "Partitioning NPRM").^{1/} In these Comments, Western Wireless demonstrates that the public interest benefits of expanding the ability of Personal Communications Service ("PCS") licensees to partition their licenses geographically and disaggregate their spectrum would be significant. First, partitioning and disaggregation will facilitate efficient use of broadband PCS spectrum by providing licensees with the ability to use only that portion of the spectrum necessary to serve their business needs. Second, partitioning and disaggregation will create additional opportunities for new players - and particularly small businesses - to enter the wireless market. Lastly, and most importantly,

^{1/} Notice of Proposed Rulemaking (Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees (WT Docket No. 96-148); Implementation of Section 257 of the Communications Act - Elimination of Market Entry Barriers (GN Docket No. 96-113)), FCC 96-287 (released July 15, 1996).

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partitioning and disaggregation will place spectrum in the hands of those entities that value the spectrum the most and will enable service to be provided to the public in the most expeditious manner. For these reasons, Western Wireless fully supports the Commission's proposals to expand the ability of PCS licensees to partition their licenses geographically and disaggregate their spectrum.

I. INTRODUCTION

Western Wireless holds seven Major Trading Area ("MTA") PCS licenses, namely Denver, Des Moines/Quad Cities, El Paso/Albuquerque, Honolulu, Oklahoma City, Portland, and Salt Lake City.^{2/} In February 1996, Western Wireless became the first auction-awarded PCS licensee to commence commercial operation in the United States. In June 1996, Western Wireless commenced commercial operations of the second auction-awarded PCS system in the United States when it initiated service in Salt Lake City. Recently, Western Wireless commenced commercial operations of its third and fourth PCS systems in El Paso/Albuquerque and Portland, and it will soon initiate service in its other PCS markets.

II. PARTITIONING

- A. The Public Interest Would Be Served by Expanding the Partitioning Rules to Allow Those Carriers that Most Value a Geographical Area to Obtain the License to Serve That Area.

The public interest would be served by relaxing the

^{2/} Western Wireless also is the 49.9 percent limited partner in Cook Inlet Western Wireless PV/SS PCS, L.P., which was the high bidder for 13 BTAs in the C Block PCS auction and 1 BTA in the C Block PCS reauction. In addition, Western Wireless, through its subsidiaries, owns and operates cellular systems in 15 western states.

partitioning rules to allow any entity that meets the eligibility requirements for holding a broadband PCS license in that frequency band to acquire a partitioned geographical area within an MTA or BTA. By relaxing the partitioning rules, the Commission will allow spectrum to be used more efficiently, speed service to unserved or underserved areas, and increase competition. See Partitioning NPRM at ¶ 16.

The Commission's build-out rules require 30 MHz PCS licensees to serve one-third of the population within 5 years and two-thirds of the population within 10 years. Holders of 10 MHz licenses need only serve one-quarter of the population in their licensed area within 5 years, or make a showing of substantial service.^{3/} Consequently, under these rules, PCS licensees in many situations could meet the build-out requirements by serving only urban areas and heavy traffic corridors within their licensed areas. By expanding the partitioning rules to allow any entity that meets the eligibility requirements for holding a PCS license to acquire a partitioned geographical area of an MTA or BTA license, the Commission will facilitate the provisioning of PCS in rural or remote areas -- areas in which service might otherwise be delayed or not provided at all.

The current rules, which allow only rural telephone companies to obtain partitioned areas within an MTA or BTA that are reasonably related to their wireline service areas, dramatically impair the marketability of these partitioned areas by severely limiting the pool of potential buyers. The presumption is that a

^{3/} Section 24.203 of the Commission's Rules, 47 C.F.R. §24.203.

"reasonable" partitioned area contains no more than twice the population of the rural telco's wireline service area that lies within the PCS service area. Hence, in many instances, there will be only one carrier eligible to obtain a partitioned portion of an MTA or BTA, and, in some instances, none. Furthermore, even if a rural telephone company is eligible to obtain a partitioned area of a PCS license, the company's knowledge of its unique, or almost unique, status as a potential buyer erodes a PCS licensee's bargaining power to get a fair price for the partitioned portion of the market. The likelihood that a new market entrant will be a vigorous competitor in the PCS marketplace and use the spectrum most efficiently is significantly increased when that entrant had to compete for the purchase within an open field of qualified bidders. Artificial regulatory restraints inhibit the realization of the very policy goals the Commission sought to promote when it adopted a competitive bidding regime in the first instance.

This limited ability to partition a license does not adequately ensure that consumers in rural or remote areas will have access to PCS. Western Wireless, for example, is currently evaluating its partitioning options in one of its MTAs, and has found that most rural telephone companies have little interest in obtaining a partitioned portion of its licensed area. Thus, to ensure that consumers in rural or remote areas have equal access to PCS, it is imperative that the Commission expand the partitioning rules.

In sum, Western Wireless fully supports the Commission's proposal to allow any entity that meets the minimum eligibility

requirements for holding a broadband PCS license in the given frequency band to acquire a partitioned geographical area within an MTA or BTA. By taking this action, the Commission would further its stated objectives of placing licenses in the hands of those entities that value them the most and promoting the most rapid, diverse and cost effective provision of PCS to the public.

B. The Commission's Rules Should Provide PCS Licensees with Maximum Flexibility to Partition Their Licensed Areas.

Western Wireless supports the Commission's conclusion that all broadband PCS licensees should be permitted to partition their licenses along county lines. Western Wireless also advocates that the Commission grant waivers of the requirement that partitioning be along county lines in cases where a different manner of partitioning (i) promotes a legitimate business purpose and (ii) poses no adverse effects on the public. The Commission should not impose any further restrictions or limitations on the size of the partitioned geographic area that may be obtained by any qualifying entity.

C. Entrepreneurs and Licensees with Competitive Bidding Benefits.

Western Wireless supports the Commission's tentative conclusion that a C or F block licensee be permitted to partition at any time to parties that would be eligible for licenses in those blocks (i.e., to an entity that either holds other entrepreneur block licenses and thus at the time of auction satisfied the entrepreneur block criteria, or that satisfies the criteria at the time of partitioning). See Partitioning NPRM at ¶ 21. This flexibility will maximize the availability of PCS to rural or remote areas and will enable more entities to participate in the

provision of PCS, including small businesses and businesses owned by minorities and women.

- D. The License Term of the Partitioned License Should Mirror the Original License.

The Commission proposes that a partitionee should hold its license for the remainder of the partitioner's original ten-year license term, and that a partitionee be afforded the same renewal expectancy as an MTA or BTA licensee. Partitioning NPRM at ¶ 29. Western Wireless supports these proposals.

- E. The Public Interest Would Be Served by Requiring Partitionees to Meet the Original Construction Requirements Applicable to the Original Licensees, But Allowing Partitionees Additional Time, If Necessary, to Meet These Requirements.

The purpose of the construction requirements applicable to MTA and BTA licensees is to expedite service to the public and promote efficient use of the spectrum. Partitioning NPRM at ¶ 31. The Commission has proposed a choice between two different options, namely (i) the partitionee must satisfy the same requirements as the original licensee, or (ii) the partitionee must satisfy the substantial service requirement, provided the original licensee has met its five-year build-out requirement and certifies that it will meet the ten-year coverage requirement for the entire market. Id. at ¶¶ 32-34. Western Wireless agrees that both of these construction requirement options will ensure that service will be provided to the public by partitionees.

In the alternative, and in order to simplify the construction requirements applicable to partitionees, Western Wireless proposes a single construction requirement that combines the attributes of the two options proposed by the Commission. Under this single

construction requirement, a partitionee would be obligated to satisfy the same construction requirements as the original licensee, but would be eligible for an automatic extension of time equal to the time that had elapsed between the dates of the original license grant and the partitionee's acquisition of the market portion. Thus, if an A Block licensee partitioned a portion of its service area three years after initial license grant, the partitionee would be required to serve one-third of the population within two years of the consummation of the partitioning, but would be eligible for an automatic extension of time up to three years. This proposal would ensure that service is expeditiously provided to the public and would provide partitionees with additional time needed to meet the original construction requirements, and thus enhance the marketability of partitioned portions of licenses in the years following initial grant.

III. DISAGGREGATION

Western Wireless supports the Commission's proposal to eliminate the prohibition against spectrum disaggregation prior to January 1, 2000. Partitioning NPRM at ¶ 38. Western Wireless submits that the PCS spectrum block auctions were the first step in the evolution to a fully competitive wireless market. Step two will be the initiation of the wireless services as determined by market conditions. There will be, among other changes in the marketplace, reorganizations, acquisitions, divestitures, consolidations, joint ventures, and alliances. In apparent recognition of these market forces, the Commission recently relaxed the holding period for C and F Block licensees to permit transfers

and assignments of licenses to other entrepreneurs within the first five years after license grant.^{4/}

By allowing PCS licensees to disaggregate spectrum, the Commission would place in the hands of licensees important decisions on how best to structure a PCS enterprise. By doing so, the goals of elimination of market entry barriers, efficient spectrum use, expedited access to broadband PCS service, and competition would be furthered. The same rules governing partitioning, such as license term and construction requirements, should likewise apply to disaggregation. Unjust enrichment issues should also be handled the same way as with geographic partitioning, except that pro rata allocations should be made on the basis of disaggregated spectrum to total spectrum.

IV. CONCLUSION

Western Wireless urges the Commission to adopt the partitioning and disaggregation rules proposed in this proceeding. By allowing marketplace forces to determine the structure of a PCS enterprise free from unnecessary regulatory barriers, the

^{4/} Report and Order (Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap (WT Docket No. 96-59); Amendment of the Commission's Cellular/PCS Cross-Ownership Rule (GN Docket No. 90-314)), FCC 96-278 (released June 24, 1996), at ¶ 83.

Commission will expedite the provision of a broad range of PCS services to the public.

Respectfully submitted,

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